

individual dumping margin contrary to its own past practices and the expressed provision of law. Further, the Authority has recognised the fact that the GoM and the exporter had not provided the information regarding two subsidy schemes in its examination under paras 42, 114, 115 and 154. The Authority, despite clear findings regarding falsification and suppression of information by GoM and Malaysian exporter has proposed to accord the Malaysian exporter individual dumping margin contrary to its own past practices and the expressed provision of law. This is contrary to the consistent approach of the Authority to reject the responses of the parties who have either not provided complete information or have provided incorrect information.

207. Domestic Industry is not provided with the names of the schemes under which the foreign exporter has availed benefits.
208. It may be noted that while the Authority was able to identify the active lies of the exporter with respect to program 1 and 8, there still is no response of either the Malaysian exporter or the Government of Malaysia with respect to such schemes.
209. The examination of the Authority in an anti-subsidy investigation cannot be reduced to a "ball-chasing" event where the Authority is required to make sure that all the benefits received by the exporter has indeed been correctly reported in the response of the relevant exporter and the Government
210. The Domestic Industry further submits that to determine countervailability of a particular program or the benefit received under such program, it is imperative for the Authority to have complete information from the producer/exporters of the subject country and the Government of the subject country. It is for this very reason that the Authority has consistently refused to grant individual subsidy margin to the producers/exporters when no/incomplete response is received from the Government of such country.
211. The Government of Malaysia as well as the responding exporter has consciously and proactively provided false information to the Authority and have suppressed vital information and, that there is no response of Government of Malaysia to back-up the information provided by the responding exporter with respect to Program No. 1 and Program No. 8.
212. Even in anti-dumping duty investigation, the same responding exporter provided incorrect information with respect to their related party information. The same was found to be incorrect and at the fag-end of that investigation, the responding exporter changed its stance on insistence of Domestic Industry and after direct evidence was provided by the Domestic Industry clearly indicating that the information provided by the responding exporter was incorrect.
213. Responding Malaysian exporter, Xinyi Solar has not disclosed the existence of their related company in Malaysia. However, there is absolutely no discussion of this issue in the disclosure statement. As the Authority is aware that certain benefit received by subsidies are fungible and can be easily utilized by the group companies and, therefore, it is of utmost importance that the analysis of all the related companies is carried out appropriately.
214. In the countervailing investigation, initiated against India, Indian exporters face strict scrutiny about related party transactions and benefit availed by them. Even Government

of India's response is rejected on finding small discrepancy in their data. We humbly request that if not more, at least the same level of scrutiny should be made against the exporters of subject goods from Malaysia. Surprisingly, we propose to reward such behaviour of the Government of Malaysia and the so-called cooperating exporter.

○ **Comments on specific subsidy schemes**

Program No. 1: Subsidies on natural gas

215. Having recognised that the price of natural gas in Malaysia itself is distorted, the import price of natural gas in Malaysia cannot and should not be used for setting the benchmark prices of natural gas for the purpose of subsidy computation. It is submitted that once the Authority has reached the conclusion that the price of natural gas in Malaysia itself is distorted, there is every reason to consider the import prices in Malaysia also as distorted on account of distorted domestic market prices. In such a situation and in the absence of any information from either the Government of Malaysia or the exporter, the Domestic Industry humbly requests the Authority to kindly set the benchmark prices at *** USD/MMBtu on the basis of the unsubsidized domestic prices in India as such prices are neither subsidized nor influenced by the Government intervention.
216. The Domestic Industry has not been provided with any information with respect to the benchmarked prices used for computing subsidy margin for non-cooperating Malaysian exporter. Such a benchmark price cannot be kept confidential from the Domestic Industry as the same is based on international import prices in Malaysia and does not pertain to confidential information provided by any party.
217. The Domestic Industry reiterates that the subsidy on natural gas, while providing the industries in manufacturing sector access to cheap gas, leads to reducing the cost of electricity production. The electricity so produced is thereafter supplied to the manufacturing industries at cheap rate leading to substantial overall cost reduction. Gas and electricity are critical components of manufacturing process in glass industry. Around 54% of the Malaysia's electricity generation comes from thermal sources with 54 percent of total generation coming from gas-fired plants.¹ Having found that natural gas pricing is distorted in Malaysia on account of government subsidization, the Authority should have also examined the impact of gas subsidies on the electricity provided to the Malaysian exporter. However, no such exercise has been carried out by the Authority.

Program No. 8: Sales Tax Exemption

218. While the Authority has recognised the falsification and suppression of information by the Malaysian exporter and the Government of Malaysia with respect to this program, undue benefit is proposed to be given to them by not rejecting the responses of the said parties. Further, without there being information from the Government of Malaysia that the information given by the cooperating exporter is correct, the Authority could not have accepted the information supplied by the cooperating exporter.

Program No. 17: Allowance for Plant & Machinery

¹ <https://www.export.gov/apex/article2?id=Malaysia-Energy>

219. With respect to Program No. 17, the Authority has found that this scheme is not countervailable. However, the said findings of the Authority are based on incorrect and misleading information submitted by the Government of Malaysia and the responding exporter. In this regard, the Government of Malaysia on page 106, point (f) of their submission has clearly stated that “government does not exercise discretion as to which firm is eligible to benefit”. However, contrary to the said submission of the Government of Malaysia, para 80 and 81 of schedule 3 of Income Tax, Act of Malaysia provides absolute discretion to the Minister to grant benefit under the scheme to any person who is otherwise eligible to get benefit under this scheme. Such an absolute and unguided discretion to the Minister leads to making the present program countervailable subsidy in terms of Article 2.1(c) of the SCM Agreement.
220. The detailed computation of NIP provided to the Domestic Industry reveals that the NIP of the Domestic Industry has been computed on the basis of optimized capacity utilization of the Domestic Industry. However, the total capacity of *** MT taken for this purpose is the total tempering capacity of the Domestic Industry. The Domestic Industry submits that the Product under Consideration is manufactured by tempering Annealed glass. The production capacity of the Domestic Industry is limited to the production capacity of Annealed Glass. Therefore, instead of taking the tempering capacity of *** MT, the Authority should have taken the production capacity of Annealed glass which is *** as the Domestic Industry cannot manufacture the subject goods beyond the production of Annealed glass.
221. The Domestic Industry requested for the certain essential information from the Authority through its email dated 26.11.2020 and 27.11.2020. However, apart from point Detailed NIP, no response has been received from the Authority.

Views of Other Interested Parties

222. Xinyi Solar submitted that although the Government of Malaysia (GoM) has admitted Gas prices are regulated by Government, the gas price offered to Malaysian users is higher than in other Asian markets and India as well.
223. In determination whether the Gas Program is countervailable, the DGTR has evaded talking about the specificity of the programs. The GoM has stated in the Questionnaire response that the industrial users of gas in Malaysia are charged based on tariff category and enterprises within the same category will be charged same price. Therefore, Program No.1 is not specific and thus cannot be regarded as countervailable.
224. Under Gas Cost Pass-Through (GCPT) mechanism, gas pricing is adjusted every 6 months in order to match with market price and is expected to reach market price in 2020. In fact, GCPT mechanism has ended at the end of 2019. The gas supplier, Gas Malaysia Berhad has made company announcement regarding the change of gas price.
225. Xinyi Solar submitted that no subsidy was granted to Gas suppliers in Malaysia since January 2020. Starting from January 2020 the gas bill no longer has GCPT section or "**Government subsidies**" ("**Subsidi Oleh Kerajaan Persekutuan**" in Malay) which proved that GCPT mechanism has ended and the assistance has been cancelled since then.

226. Xinyi Solar has submitted that the “Program No. 8- Sales Tax Exemption is not applicable because LMW has eased the process of claim back import duty & sales tax, draw back action not required”.
227. During the most recent tax audit carried out by Malaysia Tax Authority, it has been concluded that Xinyi Solar has failed to meet one of the conditions. As a result, Malaysia Tax Authority had decided to withdraw the ITA benefit and impose a tax payable for year of assessment 2018 amounting to MYR 17,072,972.88 attached with penalty amount MYR 2,560,945.93. One of the important conditions for availing ITA benefit was that the applicant should not have employed more than 20% of unskilled foreign workers.
228. The adoption of 8 year as Average Useful Life (AUL) does not match with actual average AUL of the company. The Authority should adopt AUL on the basis of average life of assets claimed and adopted in its Annual Report to work out the depreciation which meets the requirement of GAAP
229. The notional interest on gas subsidy and sales tax/customs duty and investment tax allowance shall be based on average of the POI i.e. 6 months and not one year. It is submitted that the average interest rate applicable during the POI was 4.06%, but the Authority has applied a notional interest cost on total subsidy worked out @ 6.5%. which is incorrect.
230. Based on the confidential version of the computation of Subsidy Margins, it has been observed that DGTR has considered impact of Investment Tax Allowance twice for the period of investigation. First impact has been considered based on actual utilization of ITA during the POI, the other one is by adding impact of notional impact of ITA by dividing closing balance of ITA as on 31st December 2018. The notional impact has been worked out by dividing the closing balance of ITA by AUL i.e. 8 years. When the ITA for the poi has been duly absorbed/utilized and accounted for computation of subsidy, there is no logic for working out additional impact of ITA on notional basis for the poi again in respect of closing balance of ITA. This accounts for double counting and should be rectified.
231. The Disclosure does not show that the DI has suffered any material injury during the POI on account of alleged subsidized imports of PUC from Malaysia;
232. Imports in the present case are primarily due to very significant demand supply gap and quality issues at the end of the petitioner. Alleged subsidy is not the reason for increase in imports as alleged;
233. Imports made by SEZ unit needs to be segregated for both volume and price parameters while conducting injury examination which is done only for volume parameters now.
234. Thus, the Disclosure does not show any concrete evidences of countervailable subsidy and consequential injury to the domestic industry in the export of PUC from Malaysia which should lead to the termination of the present investigation

P. Examination by the Authority

235. The Authority notes that the various cases referred to by the Domestic Industry for rejection of an incomplete response by an exporter including the recent case of *New pneumatic radial tyres (AD investigation)*. The participating exporter in the pneumatic tyre anti-dumping case had not provided many appendices pertaining to data. In the instant CVD case, the producer/exporter in the questionnaire response provided details of subsidies as availed by them. The Authority had also obtained response from the Government of Malaysia. The recently cited case of AD investigation on rejection of participating exporter is in fact materially different from the present case. Any CVD case needs to be investigated by referencing both the responses of the producer/exporter and the Government of the exporting country. In case some data of benefit of subsidy travelling to the producer/exporter is not provided in producers/exporters response, which may be on account of non-availability of the pertinent information with him but may be countervailable as a subsidy, the Authority in that event is obligated to correlate the same with the response of the Government. In the instant case, the information provided by the Malaysian Government and the producer/exporter has been correlated during the process of investigation to compute the countervailable subsidy margin. Therefore, it may happen in certain cases that the data provided by the producer/exporter may alone not be adequate and may require supplementation by the response of the Government to ensure that quantum of countervailable subsidy could be properly assessed. This is important since some subsidies could be computed directly on the basis of exporter's data while in some cases the pass through effect may need to be gauged.

236. The Authority notes that the Government of Malaysia in its response to schemes had specifically highlighted details of eligibility criteria and whether a benefit was received by the company under investigation among other details. In this regard the Government of Malaysia stated that the benefit was received by the exporter/producer under investigation on schemes Nos. 11,17,20 & 21 as stated Para 31 onwards of this finding. Further, the comments of the Government of Malaysia on other schemes including natural gas are specifically stated in Part F4 of this finding.

237. With regards to the submissions regarding certain specific subsidy schemes, the Authority notes the following -

Investment Tax Allowance (ITA)

238. The Authority notes the claim made regarding ITA by the cooperative producer/exporter on the Average Useful Life (AUL). The claim of the producer/exporter based on company as a whole and further with the audit report wherein the AUL is demonstrated between 10 and 15 years has been noted. In this regard the Authority notes that in the exporter questionnaire instructions (section C, Program Specific Questions, para 4), the indicative AUL has been mentioned as 10 years. The Authority therefore has not considered the exporter's claim of 10-15 years but has adopted the AUL of 10 years.

239. The Authority notes the post disclosure submission of the producer/exporter stating rejection of their ITA claims and its consequential refund along with penalty to the Government of Malaysia (GoM). The Authority holds that the claim of refund is not verifiable at this stage for reasons of its non admissibility or its restoration to the producer/exporter later. The Authority notes that the cooperating exporter has also post filing of their comments to the disclosure have in continuation of their earlier comments submitted an ITR return of 2019 and copies of relevant cheques to confirm that ITA has

been discontinued to them. Therefore, this aspect may be filed by producer/exporter later under a review in accordance with relevant rules. The Authority has held ITA countervailable as has been stated in the disclosure statement and by considering the actual and the notional annualised allowance on the basis of AUL. The producer/exporter has also submitted that the interest rate adopted for various computations as 6.5% needs to be considered as 4.06% for which evidence has been furnished. The Authority has considered the same.

Licensed Manufacturing Warehouse (LMW)

240. The Authority notes that as regards the countervailability of Licensed Manufacturing Warehouse (LMW), there is no double counting as was clarified in the disclosure statement and also in the aforesaid relevant paras. The Authority reiterates that under this scheme the Custom duty foregone on import of plant and machinery has been countervailed and sales tax foregone both on plant and machinery and on domestic sales has been captured in the Program 8.

Sales Tax

241. The Authority notes that while input sales tax on plant/machinery/other inputs has already been addressed in the disclosure, the output sales tax pertaining to sales in the domestic Malaysia market has also been considered as countervailable. The Authority has therefore noting the submissions by various interested parties has also evaluated the subsidy available on account of exemption of GST on domestic sales during the POI and included in the total quantum of subsidy.

Natural Gas Subsidy

242. The Authority notes the submissions of the domestic industry, the cooperative exporter and the Government of Malaysia regarding the availability quantification including mechanism of subsidy granted on natural gas to various entities.

243. The Government of Malaysia has provided the mechanism of gas pricing in their response. They have claimed that currently the regulated gas price is slightly lower than the market price. The participating exporter during desk verification has explained that subsidy for the Federal Government shown in the invoice raised by the gas supplying company is the gas price difference between the export price of gas from Malaysia and the gas price for their domestic customers. The Authority notes that the invoices raised by the Gas company to the exporter the amount of subsidy from the Federal Government is depicted. While examining the annual report of the gas supplying company, it has been found that a further grant has also been given by the Government to this company. The same has also been considered as part of the subsidy. The Authority notes the submissions made by the domestic industry, stating that since the exporter filed the questionnaire response falsely, his response should be rejected. The Authority has dealt with this issue in the foregoing paras. As regards, domestic industry's submission that the import price of LNG into Malaysia is the appropriate benchmark for quantification of subsidy, the Authority notes that this claim on benchmarking is not appropriate as it is not an apple to apple comparison and that the HS Code of LNG and NG are also different. However, for the non-cooperative/residual producers/exporters the Authority has adopted this benchmark approach, keeping in view adverse fact approach.

244. During the course of data verification of the producer/exporter it emerged that natural gas was sourced from the gas company by M/s Xinyi Energy Smart (Malaysia) Sdn. Bhd., a related entity of M/s Xinyi Solar. It was then invoiced by M/s Xinyi Energy Smart to M/s Xinyi Solar at the same price. The Authority noting the relationship between the two companies has included the subsidy applicable to M/s Xinyi Solar in the quantum of subsidy evaluated for M/s Xinyi Solar.
245. In this regard the Authority also notes submission of the domestic industry regarding analysis of related companies of the cooperating exporter. The Authority therefore confirms that while computing the amount of subsidy in natural gas availed by the cooperating exporter, the Authority has in fact considered the subsidy accorded to its related company i.e. M/s Xinyi Energy Smart (M) Sdn Bhd and has adopted the same for M/s Xinyi Solar Malaysia SDN BHD.
246. The Authority notes that that the Non confidential version of the exporter questionnaire response did not have names of subsidy schemes availed by the cooperating exporter. The Authority after due examination has addressed the concerns in the disclosure statement by providing the same.
247. The Authority notes the submission of the domestic industry regarding willful suppression of the facts and providing false information to the Authority and has addressed these concerns in the foregoing paragraph.
248. NIP has been worked out by optimising the capacity of Textured Tempered Glass by following due procedure as laid down vide Annexure III of CVD Rules.
249. As regards submissions of the domestic industry regarding data pertaining to SEZ and non SEZ units the Authority notes the same has been provided in the disclosure statement and is also contained in this final finding.

Q. Conclusions

250. Having regard to the contentions raised, information provided and submissions made by the interested parties and facts available before the Authority as recorded in the above findings, the Authority concludes that:
- i. The product under consideration has been exported to India from subject countries at subsidized prices
 - ii. The domestic industry has suffered material injury due to subsidization of the product under consideration.
 - iii. The material injury has been caused by the subsidized imports of the subject goods originating in or exported from the subject countries.

R. Indian Industry's Interests And Other Issues

251. The Authority notes that the purpose of imposition of countervailing duty, in general, is to eliminate injury caused to the domestic industry by the unfair trade practices of subsidization so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the Country. Imposition of countervailing duty

would not restrict imports from the subject country in any way, and, therefore, would not affect the availability of the products to the consumers.

252. It is recognized that the imposition of countervailing duty might affect the cost of the subject goods. However, fair competition in the Indian market will not be reduced by the imposition of the countervailing measures, particularly if the levy of the countervailing duty is restricted to an amount necessary to redress the injury caused to the domestic industry by the imports of subsidized subject goods. On the contrary, imposition of countervailing measures would remove the unfair advantages gained by subsidization and create level playing field.

S. RECOMMENDATION

253. The Authority notes that the investigation was initiated and notified to all interested parties including Government of Malaysia and adequate opportunity was given to provide information/evidence on the aspect of subsidization, injury and causal links in favour or against thereof. Having initiated and conducted the investigation into subsidization, injury and causal links in terms of the Rules laid down and having established positive subsidy margin as well as material injury to the domestic industry caused by such subsidized imports, the Authority is of the view that imposition of definitive countervailing duty is required to offset subsidization and injury. Therefore, the Authority considers it necessary to recommend imposition of definitive countervailing duty on the imports of the subject goods from the subject country in the form and manner described hereunder.

254. Having regard to the lesser duty rule followed by the Authority, the Authority recommends imposition of definitive countervailing duty equal to the lesser of margin of subsidy and margin of injury for a period of five (5) years, from the date of notification to be issued in this regard by the Central Government, so as to remove the injury to the domestic industry. Accordingly, definitive countervailing duty as mentioned in Col No.7 of the duty table below is recommended to be imposed from the date of notification to be issued in this regard by the Central Government on all imports of the subject goods from the subject country.

Duty Table:


S.no.	Heading/Sub-heading	Description of Group	Country of origin	Country of export	Producer	Duty Amount as % of CIF value
1.	70071900	Textured Tempered Glass whether Coated or Uncoated	Malaysia	Malaysia	Xinyi Solar (Malaysia) Sdn. Bhd.	9.71

2	-do-	-do-	Any country other than Malaysia	Any	Xinyi Solar (Malaysia) Sdn. Bhd.	10.14
3	-do-	-do-	Any country other than Malaysia	Any country other than Malaysia	Any other than Sl no. 1 above	10.14

255. Landed value of imports for the purpose of this Notification shall be the assessable value as determined under the Customs Act, 1962 (52 of 1962) and includes all duties of customs except duties under sections 3, 3A, 8B, 9 and 9A of the said Act.

T. Further Procedure

256. An appeal against the order of the Central Government arising out of this final finding shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act.



(B.B. Swain)

Special Secretary & Designated Authority